

REMARKS

Applicants submit this Amendment in reply to the Office Action mailed August 10, 2005.

As an initial matter, without necessarily agreeing with the characterizations made in the election of species requirement set forth on pages 2-3 of the Office Action, solely in the interests of expediting the prosecution of this application, Applicants affirm the election of Species I, claims 52-57, 60-63, 109, and 116-119 in a telephone conversation with the Examiner on August 4, 2005.

By this Amendment, Applicants amend claims 52, 60, 61, and 116-119, and add new claims 120 and 121 to further define the claimed invention. The originally-filed specification, drawings, and claims fully support the subject matter of amended claims 52, 60, 61, and 116-119, and new claims 120 and 121. No new matter has been introduced.

Before entry of this Amendment, claims 52-57, 60-63, and 109-119 were pending in this application, with claims 110-115 having been withdrawn from consideration. After entry of this Amendment, claims 52-57, 60-63, and 109-121 are pending in this application, with claims 110-115 still having been withdrawn from consideration. Claims 52, 60, and 110 are independent claims.

Applicants also note that the inventions of Scott J. WOLF; Greg R. FURNISH; Todd A. HALL; David Y. PHELPS; Nancy C. BRIEFS; William SANTAMORE; Daniel BURKHOFF; Simon FURNISH; Stephen EVANS; Roger D. KAMM; Richard RENATI; Gerald MELSKY; and Eun Bo SHIM are no longer claimed in this application. Thus, Applicants respectfully request an amendment to the inventorship that deletes these

individuals as named inventors in this application. Thus, the inventive entity of this application should be Peter J. WILK. Applicants are submitting herewith a Petition Under 37 C.F.R. §1.48(b) requesting that the application be amended.

On page 4 of the Office Action, claims 52-57, 60-63, 109, and 116-119 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,287,861 to Wilk ("Wilk").¹ Applicants respectfully traverse this rejection.

Wilk does not disclose the claimed invention. For example, each of independent claims 52 and 60 recites, among other aspects, "wherein the conduit remains open during both systole and diastole." Wilk does not disclose at least this aspect of the respective claimed inventions either alone or in combination with the other aspects of the respective claimed inventions.

Indeed, even assuming *arguendo* that expandable stent 12 in Wilk corresponds to the conduit set forth in independent claims 52 and 60, Wilk discloses that "the stent opens and allows blood to flow from the left ventricle into the coronary artery during diastole and is closed by heart contraction during systole." (Abstract; col. 1, lines 51-54). Wilk also discloses that "[d]uring systole, the opening is closed, thereby blocking direct communication from the left ventricle into the coronary artery through the heart wall." (Col. 2, lines 33-36). Further disclosure of stent closure during systole can be found, for example, in Wilk at col. 2, lines 43-46; col. 3, lines 53-57; and Fig. 2B. Accordingly, Wilk does not disclose "wherein the conduit remains open during both systole and diastole" either alone or in combination with the other aspects of the

respective claimed inventions. Accordingly, for at least these reasons, Applicants respectfully request withdrawal of the Section 102(e) rejection based on Wilk.

Applicants further submit that claims 53-57, 61-63, 109, and 116-121 depend directly or indirectly from one of independent claims 52 and 60, and are therefore allowable for at least the same reasons that independent claims 52 and 60 are allowable. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by Wilk and therefore each is also separately patentable.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the specification and claims in this Amendment it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.


¹ Applicants understand the rejection to be a rejection under 35 U.S.C. § 102(b). If Applicants understanding is not correct, Applicants request clarification in the next Office communication.

If there is any fee due in connection with the filing of this Amendment that is not otherwise accounted for, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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